

CONSOLIDATED ORDER

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DOCKET NO. 21088

Joint Application of MFS Communications Company, Inc.
and GTE Southwest, Inc. for Approval of Interim Co-Carrier
Texas Interconnection Agreement Under PURA and the
Telecommunications Act of 1996

DOCKET NO. 21256

Application of NET-tel for an Amendment to its Service
Provider Certificate of Operating Authority

DOCKET NO. 21265

Initial Transmission Cost of Service Filing for Rayburn
Country Electric Cooperative, Inc., Pursuant to P.U.C.
SUBST. R. 25.191

✓ DOCKET NO. 21544

Application of SCC Communications Corp. for a Service
Provider Certificate of Operating Authority

DOCKET NO. 21619

Application of AT&T Communications of the Southwest, Inc.
for an Amendment to its Certificate of Operating Authority

DOCKET NO. 21640

Application of FEC Communications, L.L.P. for a Service
Provider Certificate of Operating Authority

DOCKET NO. 21663

Application of iConnect Corp. for a Service Provider
Certificate of Operating Authority

DOCKET NO. 21679

Application of Rig Telephones, Inc., d/b/a DATACOM for a
Service Provider Certificate of Operating Authority

DOCKET NO. 21689

Application of BroadBand Office Communications, Inc. for a
Service Provider Certificate of Operating Authority

DOCKET NO. 21695

Application of WorkNet Communications, Inc. for a Service
Provider Certificate of Operating Authority

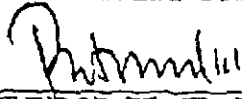
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The Commission adopts the attached findings of fact and conclusions of law and issues the orders set out therein.

SIGNED AT AUSTIN, TEXAS on the 13th day of January 2000.

PUBLIC UTILITY COMMISSION OF TEXAS


PAT WOOD, III, CHAIRMAN


JUDY WALSH, COMMISSIONER


BRETT A. PERLMAN, COMMISSIONER

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DOCKET NO. 21544

APPLICATION OF SCC COMMUNICATIONS § PUBLIC UTILITY COMMISSION
CORP. FOR A SERVICE PROVIDER §
CERTIFICATE OF OPERATING AUTHORITY § OF TEXAS

ORDER

This Order grants SCC Communications Corp. (the Applicant) a service provider certificate of operating authority (SPCOA) to provide data-only, facilities-based telecommunications services for the geographic area of the entire state of Texas. The docket was processed in accordance with applicable statutes and Commission rules. The Commission provided notice of the application to interested parties. No protests, motions to intervene, or requests for hearing were filed. The Applicant and the Commission's Office of Regulatory Affairs (ORA) are the only parties to the proceeding. ORA recommends approval of the application, as amended. The application, as amended, is hereby approved.

I. Findings of Fact

Procedural History

1. On October 21, 1999, SCC Communications Corp. (the Applicant) filed with the Public Utility Commission of Texas (Commission) an application to obtain an SPCOA. Amendments to the application were filed on November 3, 1999, November 4, 1999, and December 22, 1999.
2. On October 26, 1999, the Commission issued an Order establishing a procedural schedule, entering a protective order, and determining filing and service procedures.
3. On October 28, 1999, the Commission's Office of Customer Protection (OCP) filed its complaint history memorandum.
4. On November 3, 1999, consistent with the Office of Regulatory Affairs' recommendation and amended recommendation, the Commission found that the Applicant, together with affiliates, had less than six percent of the total intrastate switched access minutes of use, as measured by the most recent 12-month period for which data is available preceding the filing of the application; and certified the Applicant eligible to obtain an SPCOA. ORA checked with the Secretary of State and found that the name SCC Communications Corp. has been registered as of December 7, 1998. ORA also checked the certificate of operating authority (COA), SPCOA, and incumbent local exchange company official lists, and found no duplications or conflicts. ORA also checked the Interexchange Carriers list and found no duplications or conflicts.

DOCKET NO. 21544

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CORP. FOR A SERVICE PROVIDER §
CERTIFICATE OF OPERATING AUTHORITY § OF TEXAS

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5. On November 5, 1999, the Commission provided adequate notice of this proceeding in the *Texas Register* and through a posting on the Internet.

6. On November 19, 1999, ORA filed a motion for continuance and on November 22, 1999, that motion was granted.

7. On December 20, 1999, ORA filed a recommendation stating that the Applicant is financially and technically qualified to receive the SPCOA requested, and recommending that the application be approved, as amended.

8. By Order dated December 22, 1999, documents relied upon in this Order were admitted into evidence.

Applicant's Request

9. The Applicant is a Delaware corporation formed on September 17, 1993, with authority to transact business in the state of Texas.

10. The Applicant has no parent company or affiliates that are public utilities or that are providing telecommunications services.

11. The Applicant proposes to serve the geographic area of the entire state of Texas (proposed service area).

12. The nature of the telecommunications services for which the Applicant seeks certification relate to the creation and use of selective routing databases that are a product of the Applicant's 9-1-1 database management services. The Applicant seeks certification for the purpose of providing the routing information necessary to ensure that the appropriate 9-1-1 selective routing tandem is updated on an ongoing basis to properly instruct the router as to which trunk group a 9-1-1 call is switched in order to be answered at the appropriate Public Safety Answering Point. Although the Applicant offers a number of database management services, it is only the provision of selective routing that, when provided to public safety agencies, constitutes a telecommunications service for which the Applicant seeks certification. The Applicant does not intend to provide any other telecommunications services.

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13. In its recommendation filed on December 20, 1999, ORA agrees with the Applicant that the portion of the Applicant's service related to selective routing constitutes a necessary element of a basic telecommunications service (proposed services).
14. ORA recommends and the Commission agrees that any decision regarding the particular selective routing methodology to be used by the Applicant be made through the interconnection agreement process rather than in this proceeding.
15. ORA also recommends and the Commission agrees that issues concerning the unbundling of an incumbent local exchange carrier's network elements used to provide selective routing should be determined in a separate proceeding.
16. The Applicant proposes to provide service to customers other than itself.
17. The Applicant has not applied for any municipal consent, franchise or permit in connection with the services and facilities for which it is applying.
18. The Applicant is not a municipality, nor will the Applicant enable a municipality or municipal electric system to offer for sale to the public, directly or indirectly, local exchange telephone service, basic local telecommunications service, switched access service, or any non-switched telecommunications service used to provide connections between customers' premises within an exchange or between a customer's premises and a long-distance provider serving the exchange.
19. The Applicant does not currently hold a local telecommunications COA or certificate of convenience and necessity for any part of the proposed service area.
20. The Applicant has never applied for a permit, license or certificate to provide telecommunications services in any state other than Texas, but provides database management services to incumbent local exchange companies, competitive local exchange carriers, and wireless carriers in several states.
21. The Applicant has never had a permit, license or certificate to provide telecommunications services denied or revoked by any state.
22. The Applicant has never provided telecommunications services in Texas or any other state.
23. OCP and the Office of the Attorney General reported no complaints registered against the Applicant.

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24. The Texas Comptroller's Office stated that the Applicant is in compliance with its statutes and rules.
25. The Applicant has the requisite technical qualifications to provide the proposed services within the proposed service area.
26. The Applicant has the requisite financial qualifications to provide the proposed services within the proposed service area.

Request for Declaratory Judgment

27. The Applicant argues that its clients, various public safety agencies, use dedicated facilities to respond to 9-1-1 calls, and are not logically part of the "customer base" on which Universal Service Fund (USF) assessments are based. Instead, the Applicant contends that the "customer base" referred to in PURA¹ and the Commission's Substantive Rules is the "millions of residential and business customers in Texas served by incumbent local exchange company and CLEC telecommunications providers."²
28. Alternatively, if the Commission concludes that the Applicant is a telecommunications provider with access to the customer base, the Applicant requests the Commission to declare under PURA § 56.022(c) that services provided by the Applicant are not subject to USF charges.
29. ORA reasons that while the term "customer base" is not defined in either PURA or the Commission's Substantive Rules, the Commission in adopting the USF rule, made clear that it was intended to apply broadly. In the preamble to § 23.150 (recently recodified as § 26.420), the Commission declined to define the term "customer base" stating, "[t]he Commission interprets PURA § 56.022 to require that all telecommunications providers, including CMRS providers...furnishing telecommunications service in Texas, must pay the USF assessment."³
30. In its recommendation filed on December 20, 1999, ORA asserted that because the Applicant is proposing to furnish a telecommunications service,⁴ under the Commission's rationale in adopting the USF rule,

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. (Vernon 1998) (PURA).

² SCC Application at 25.

³ 23 TexReg 955, 992 (February 6, 1998).

⁴ "...the provision of selective routing...when sold directly to the public (e.g., to public safety agencies) constitutes a 'telecommunications service.'" SCC Application at 8.

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the Applicant is not exempt from the USF rule. Instead, the Applicant is a telecommunications provider with access to the customer base and falls within the guidelines of P.U.C. SUBST. R. 26.420 and § 56.022(a) of PURA.

31. Section 26.420(g)(2) of the Commission's Substantive Rules provides that USF assessments are to be made on each "telecommunications provider based upon its monthly taxable telecommunications receipts reported by that telecommunications provider under Chapter 151, Tax Code."

32. The Applicant and ORA agree that it is exempt from USF assessments if it derives no taxable telecommunications receipts from its certificated services.

33. The Applicant and ORA agree that it will have no "taxable telecommunications receipts" from its proposed certificated services because the services to be provided by the Applicant are services provided exclusively to the Texas General Services Commission (GSC), Texas Councils of Governments (COGs) and Texas emergency communications districts, all of which are "governmental entities" exempt from taxation under § 151.309 of the Texas Tax Code.

34. The Applicant and ORA agree that since its services are or will be sold exclusively to governmental entities, the Applicant's revenues from the sale of its certificated services are exempt from taxation and are thus not "taxable telecommunications receipts" on which USF assessments may be calculated.

35. Based on the evidence presented, the Commission finds that the Applicant's provision of certificated telecommunications services by and on behalf of the GSC, COGs and emergency communications districts are exempt from taxation under the Texas Tax Code. Because the Applicant will derive no taxable telecommunications receipts as a result of its certificated services to the GSC, COGs and emergency communications districts, the Applicant's revenues from the sale of its certificated telecommunications services to these entities are not subject to the USF assessment under PURA § 56.022 or P.U.C. SUBST. R. 26.420.

Informal Disposition

36. More than 30 days have passed since completion of the notice provided in this docket.

37. No protests, motions to intervene or requests for hearing have been filed. No issues of fact or law are disputed by any party. No hearing is necessary.

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II. Conclusions of Law

1. The Applicant is a telecommunications provider as defined in § 51.002(10) of the Public Utility Regulatory Act, Tex. Util. Code Ann. (Vernon 1998) (PURA).
2. The Commission has jurisdiction and authority over the application pursuant to §§ 54.154(a) and 54.155 of PURA.
3. The application complies with § 54.154(b) of PURA.
4. The Commission provided notice of the application in compliance with § 54.005(a) of PURA.
5. Pursuant to PURA § 56.022 (a) and P.U.C. SUBST. R. 26.420(g), USF assessments are payable by telecommunications providers with "access to the customer base."
6. The Applicant is not exempt from the USF requirements of P.U.C. SUBST. R. 26.420 and § 56.022 of PURA. To the extent that the Applicant derives taxable telecommunications receipts under § 26.420(g)(2) under Chapter 1551 of the Texas Tax Code the Applicant will be required to pay USF assessments.
7. To the extent that the Applicant does not derive taxable telecommunications receipts as a result of its certificated services, those services provided to tax-exempt entities are not subject to USF assessment pursuant to P.U.C. SUBST. R. 26.420 and § 56.022 of PURA.
8. The Applicant is eligible to obtain an SPCOA under the criterion established by PURA § 54.153.
9. The Applicant is not precluded from providing service under an SPCOA by §§ 54.201 or 54.152 of PURA.
10. The Applicant is entitled to approval of this application, having demonstrated the financial and technical qualifications to provide the proposed services, and the ability to provide the necessary quality of service to its customers, as required by §§ 54.154(b) and 54.155(b) of PURA.
11. The Commission does not, as a result of the entry of an order granting the application, impose any additional or different service quality obligations on the incumbent local exchange companies that provide service to resellers.
12. The Commission lacks the jurisdiction or authority to determine the necessity of a franchise between a municipality and the holder of an SPCOA.

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13. This application does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.
14. The requirements for informal disposition under P.U.C. PROC. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. The application of SCC Communications Corp. for a facilities-based service provider certificate of operating authority (SPCOA) for the provision of data-only service related to 9-1-1 selective routing is approved. SCC Communications Corp. is granted SPCOA No. 60317 for the geographic area of the entire state of Texas.
2. The Applicant shall be bound by requirements of P.U.C. SUBST. R. 26.111. Service under this certificate shall be provided exclusively in the name under which the certificate was granted by the Commission.
3. The Applicant shall comply with pertinent provisions of the federal Telecommunications Act of 1996,⁵ when seeking interconnection, services, or network elements from a rural telephone company.
4. Pursuant to § 56.022(a) of the Public Utility Regulatory Act, Tex. Util. Code Ann. (Vernon 1998) (PURA), and P.U.C. SUBST. R. 26.420(g), the Applicant is not required to contribute to the Universal Service Fund (USF) for those certificated services from which the Applicant derives no taxable telecommunications receipts, that is to the extent that certificated services are provided to entities that are tax-exempt under Chapter 151 of the Texas Tax Code, the Applicant shall not be required to contribute to USF. This ruling is limited to the services and types of customers (governmental entities as defined in Texas Tax Code § 151.309) to be served by the Applicant under the certificate granted herein. If and when the Applicant requests an expansion of its certificate authority to allow it to offer telecommunications services to other types of customers, the Commission will revisit

⁵ Telecommunications Act of 1996, 47 U.S.C. §§ 151 *et seq.*

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whether the Applicant is subject to USF assessments for services provided to such customers.

5. The Applicant shall file any future changes in address, contact representative and/or telephone numbers in Project Number 19421, *Notification of Changes in Address, Contact Representative and/or Telephone Numbers, Pursuant to P.U.C. SUBST. R. 26.107.*
6. The Applicant has committed to and is bound by the quality of service requirements set forth in the Quality of Service Questionnaire, and supplemental responses included in its application, with the exception of those requirements that currently do not apply to a data-only provider seeking to provide limited telecommunications service of the nature for which the Applicant seeks certification
7. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied for want of merit.

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